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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/743,118

12/22/2003

Fred Wehling

208-015US1

7497

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EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/743,118	Applicant(s) WEHLING ET AL.	
	Examiner Jagadishwar R. Samala	Art Unit 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☒ Other: PTO-413 (Interview summary is attached).

VICKIE KIM
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The critical elements required by the instant claims (menthol, eucalyptus oil and effervescent agent) and desired hardness of tablet are taught by the cited references. In the instant case Gioffre reference in combination with Schoble teaching provides desired hardness and effervescent composition in the form of tablets along with similar other common excipients..

Applicant asserts that Gioffre et al fails to teach effervescent composition, wherein tablet that includes from 0.5% to about 10% by weight menthol and from 0.5% to about 10% by weight eucalyptus oil and also fails to teach that tablet dissolves in water having a temperature of at least 38°C to form a clear solution.

This is not found persuasive because Gioffre teaches an effervescent composition comprising menthol, eucalyptus oil and anhydrous base medium and a gas containing inorganic oxide material as an effervescent agent. And also teaches that more rapid effervescent occurs at high temperature i.e., the adsorbed gas is desorbed more rapidly at higher temperatures to provide an effervescent action and mechanical cleansing action in presence of water. Since all the critical elements required by instant claims are taught by Gioffre, it is reasonable to expect to have desired hardness of tablets in general. However applicant is reminded the reference is not anticipatory by used to establish the level of skill in the art regarding effervescent composition to provide claimed hardness of tablets in general. The reference is relied upon to establish that it is obvious to incorporate the active agent (e.g. menthol, eucalyptus oil and acid/base reaction couple in required proportions) into the present composition while achieving desired hardness and effervescent compositions. Further the reference establishes the knowledge in the art to develop a process for producing tablets having desired hardness and effervescent compositions in the form of tablets or powders. In the instant case Gioffre reference in combination with Schobel teaching provides desired hardness and effervescent compositions in the form tablets along with similar lubricants and other common excipients. Schobel teaches a therapeutic effervescent composition which dissolves rapidly in cold water to form a clear solution and dispersing the granulated therapeutic agent. And also the effervescent composition was compressed into tablets having a hardness of 7-9 strong cobb hardness units (see column 8, lines 22-25). The prior art provides a method, where an effervescent tablet when dissolved in water produces a solution, which makes it uniquely desirable for use as a mouth wash (Howard P. Andersen, US 3,629,478 see column 1, lines 24-33). Indeed the resulting effervescent mouth wash solution will have the dual role of producing an astringent mouth was effect and sensitzing action. It is noted that recitation/limitation of instant claim 1 (tablet dissolves in water having a temperature of at least 38°C to form a clear solution) is a inherent feature and as long as all critical elements (structure and composition) as required by instant claims are taught by the cited reference and thus the claims are obvious. Thus, examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).